

## Amendments to the Specification

### 1. Please replace the first paragraph on page 48 under the DEPOSITS heading with the following:

Applicant(s) ~~will make~~ has made a deposit of at least 2500 seeds of Soybean Variety XB44D04 with the American Type Culture Collection (ATCC), Manassas, VA 20110 USA, ATCC Deposit No. ~~[[ ]]~~ PTA-6743. The seeds deposited with the ATCC on ~~[[ ]]~~ May 27, 2005 ~~will be were~~ taken from the deposit maintained by Pioneer Hi-Bred International, Inc., ~~800 Capital Square, 400 Locust Street, Des Moines, Iowa 50309-2340~~ 7250 NW 62<sup>nd</sup> Avenue, Johnston, Iowa 50131 since prior to the filing date of this application. Access to this deposit will be available during the pendency of the application to the Commissioner of Patents and Trademarks and persons determined by the Commissioner to be entitled thereto upon request. Upon allowance of any claims in the application, the Applicant(s) will make the deposit available to the public pursuant to 37 CFR 1.808. This deposit of Soybean Variety XB44D04 will be maintained in the ATCC depository, which is a public depository, for a period of 30 years, or 5 years after the most recent request, or for the enforceable life of the patent, whichever is longer, and will be replaced if it becomes nonviable during that period. Additionally, Applicant(s) have or will satisfy all the requirements of 37 C.F.R. §§1.801 - 1.809, including providing an indication of the viability of the sample upon deposit. Applicant(s) have no authority to waive any restrictions imposed by law on the transfer of biological material or its transportation in commerce. Applicant(s) do not

waive any infringement of their rights granted under this patent or under the Plant Variety Protection Act (7 USC 2321 et seq.).

**2. Please replace the paragraph on page 4 lines 26-27, which is the definition of emergence score, with the following:**

EMGSC = Emergence Score. The percentage of emerged plants in a plot respective to the number of seeds planted. A score of 9 indicates an excellent rate and percent of emergence, an intermediate score of 5 indicates average ratings and a 1 score indicates a very poor rate and percent of emergence.

3. Please replace the portion of Table 1 on page 13 with the following, to remove the row with the characterization of hypocotyl length as “L”, which is shown in strikethrough font:

| PERFORMANCE CHARACTERISTICS      |        |              |
|----------------------------------|--------|--------------|
|                                  |        | XB44D04      |
| General Characteristics          |        |              |
| Herbicide Resistance             | RR,STS | RR           |
| Avg. Harvest Standability        | LDGSEV | 9            |
| Avg. Field Emergence             | EMGSC  | 8            |
| Avg. Hypocotyl Length            | HYPLSC | 7            |
| <del>Hypocotyl Length</del>      |        | <del>L</del> |
| Avg. Canopy Width (9 = wide)     | CW     | 6            |
| Avg. Shattering                  | SHATTR | 9            |
|                                  |        |              |
| Disease/Insect/Fungal Resistance |        |              |
| Phytophthora Race 4              |        | Suscept      |
| Phytophthora Race 7              |        | Resistant    |
| Phytophthora Race 25             |        | Suscept      |
| Avg. Phytophthora Tolerance      | PRT    | 5            |
| Avg. Brown Stem Rot              | BSR    |              |
| Avg. Iron Chlorosis              | FEC    | 2            |
| Avg. White Mold                  | WHMD   |              |
| Avg. Cyst Nematode Race 1        | SCN1   | 3            |
| Avg. Cyst Nematode Race 3        | SCN3   | 7            |
| Avg. Cyst Nematode Race 5        | SCN5   | 4            |
| Avg. Cyst Nematode Race 14       | SCN14  |              |
| Avg. Sudden Death Syndrome       | SDS    | 7            |
| Avg. Root-knot Nematode-Southern | RKI    |              |
| Avg. Root-knot Nematode - Peanut | RKA    |              |
| Avg. Stem Canker                 | CNKR   |              |
| Avg. Frogeye Leaf Spot           | FEY    |              |